IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2536 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

G.B. BHANGI

Appearance:

1. Special Civil Application No. 2536 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik C. Raval for the petitioner corporation. This Court has, by order dated 22.2.2002, issued rule returnable on 10.4.2002 and has also granted ad.interim relief in terms of para 7(C)

of the petition. Notice of rule issued by this Court has been served upon the respondent workman but the respondent has not remained present before this Court either in person or through any advocate. Therefore, in absence of the respondent, the matter has been taken up for hearing today.

By way of this petition, the petitioner has challenged the legality, validity and propriety of the award made by the Industrial Tribunal, Nadiad in Reference (IT) No. 17 of 1998 dated 13th June, 2001 wherein the tribunal has set aside the order of punishment of stoppage of four annual increments with permanent effect and has directed for payment of arrears of salary to the respondent workman.

Learned advocate Mr. Raval for the petitioner has submitted that looking to the explanation tendered by the respondent, he was negligent in driving the vehicle at the time of accident; his evidence has been ignored. He has submitted that because of the said accident, the corporation has been required to face the Motor Accident Claim Petition before the Motor Accident Claims Tribunal and to pay the compensation to the heirs and legal representatives of the deceased motor cyclist who has expired in the said accident. He has submitted that the explanation tendered by the respondent cannot be believed and is contrary to the common sense. Therefore, he has submitted that the tribunal has committed gross error in allowing the reference and in setting aside the order of punishment imposed by the corporation.

I have considered the submissions made by Mr. Raval. I have also perused the award made by the tribunal. Before the tribunal, the respondent has challenged the order dated 21st September, 1998 passed by the competent authority whereby punishment of stoppage of four annual increments were ordered to be stopped with recurring effect. Before the Tribunal, the respondent workman has filed statement of claim at Exh. 6 and written statement thereto was filed by the petitioner corporation at Exh. 7. Thereafter, the Corporation has produced documentary evidence at Exh. 8 and no oral evidence was led by the either side before the tribunal. Before the tribunal, legality validity and propriety of the departmental inquiry was not challenged by the respondent. Evidence was closed by both the parties before the tribunal. Thereafter, the tribunal has examined the merits of the matter and has considered the papers of inquiry which were produced by the corporation before it. The tribunal has considered the same and has

come to the conclusion that in the said accident, one person has died and damage has been caused to the bus to the extent of Rs.1000/-. The tribunal has considered that in the departmental inquiry, reporter was not examined by the Corporation. The tribunal has considered that in absence of the examination of the reporter, report cannot be considered as a piece of evidence against the respondent workman. The tribunal has observed that the charge sheet is based upon the report and, therefore, misconduct has not been proved against the respondent workman. The workman has tendered explanation that this accident has not occurred due to his rash and negligent driving but because of the negligence on the part of the motor cyclist. The criminal case was pending at the relevant time. Thereafter, the tribunal has considered that in the departmental inquiry, on behalf of the corporation, no one was examined except the workman who has tendered the explanation and considering the explanation given by the respondent, he was not negligent and careless in driving the vehicle and the accident has not occurred due to negligence on the part of the respondent. The tribunal has come to the conclusion that in absence of the evidence of the reporter, report cannot be considered to be legal evidence and the charge sheet which was based upon the report of the reporter also cannot be considered against the workman. The tribunal has considered that there was no evidence to the effect that the bus was being driven in high speed at the relevant point of time. No eye witness was examined in the departmental inquiry and, therefore, the tribunal has held that the report of the alleged incident which was submitted by the reporter has not been proved in the departmental inquiry and, therefore, the findings recorded by the inquiry officer on the basis of such report are baseless and perverse. The tribunal has also considered that in departmental inquiry, even the conductor as well as the passengers were also not examined by the corporation. The findings given by the inquiry officer are based on presumption that at the time of accident, the workman has to stop the bus but on what basis, the inquiry officer has reached to such findings has not been disclosed by the inquiry officer in the departmental inquiry. Ultimately, the tribunal has come to the conclusion that once the misconduct is not proved, report itself is not proved, then, the charge cannot be said to have been proved and, therefore, punishment imposed by the respondent corporation is required to be set aside. Accordingly on the basis of such findings and conclusion drawn by it, the tribunal has set aside the order of punishment passed by the corporation. The observations made, conclusions

drawn and the findings recorded by the tribunal are based upon the undisputed facts which cannot be considered to be disputed facts. In view of these facts, according to my opinion, the tribunal has not committed any error while passing such award. Learned advocate Mr. Raval for the petitioner corporation has not been able to point out any jurisdictional error and/or procedural irregularity committed by the tribunal while making the award in question. Therefore, there is no substance in this petition.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. Ad.interim relief, if any, shall stand vacated with no order as to costs.

29.4.2002. (H.K. Rathod,J.)

Vyas